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UNITED STATES DISTRICT COURT OF MONTANA
BUTTE DIVISION

ELIZABETH ROGERS, Plaintiff, vs. WINGS OF BOZEMAN, LLC d/b/a BUFFALO WILD WINGS, Defendant.	Cause No. CV-14-16-BU-DWM-JCL **COMPLAINT FOR DAMAGES and DEMAND FOR JURY TRIAL**

Comes now, Plaintiff, Elizabeth Rogers, and files this Complaint against Defendant Wings of Bozeman, LLC, dba Buffalo Wild Wings and

Brad Anderson, individually, through her undersigned attorneys and alleges the following:

PARTIES

1. Ms. Rogers is a resident of Bozeman, Gallatin County, Montana.
2. Ms. Rogers was employed by Defendant from 2008 to present.
3. Defendant is a Montana limited liability company doing business as Buffalo Wild Wings ("BWW") with its principal place of business in Bozeman, Gallatin County, Montana.
4. During all relevant times, Defendant was Ms. Rogers' employer within the meaning of all applicable statutes.

JURISDICTION AND VENUE

5. This Court has original and exclusive jurisdiction over Ms. Rogers' federal discrimination claim pursuant to 28 U.S.C. § 1331 because her claim arises under federal law.
6. This Court has supplemental jurisdiction over the Montana state law claims under 28 U.S.C. § 1367 because they arise from a common nucleus of operative facts with the federal claims and are so related to the federal claims as to form part of the same case or controversy under Article III of the U.S. Constitution.

7. Venue is proper under 28 U.S.C. § 1391(b)—(c) and 42 U.S.C. § 2000e(5)(f)(3) because the tort occurred in this district and Defendant's principal place of business is also in this district.

8. Ms. Rogers has exhausted her administrative remedies. On April 23, 2013 she filed a charge of gender discrimination with the Montana Human Rights Bureau ("HRB"). Pursuant to the U.S. Equal Opportunity Commission's ("EEOC") work sharing agreement, her charge was considered duly filed with the EEOC. On October 8, 2013, the HRB completed its investigation with a cause finding. As a result of this cause finding, the EEOC issued Ms. Rogers a right to sue letter on December 4, 2013.

FACTUAL ALLEGATIONS

9. In the summer of 2010, Jeremy Steiner was hired as the General Manager of BWW.

10. Mr. Steiner was hired by Bryan Yates, the regional manager for all of the Buffalo Wild Wings restaurants located in Montana.

11. Mr. Yates hired Mr. Steiner without fully investigating his employment background and records and/or failed to properly investigate and inform BWW concerning Steiner's employment background.

12. Notwithstanding the allegations in ¶11, Mr. Yates hired Mr. Steiner to manage BWW.

13. Beginning in June 2012, Mr. Steiner began sending Ms. Rogers regular and repeated text messages seeking a personal relationship, asking her to come to his home, and/or asking to come to her home.

14. Ms. Rogers made clear that she did not want a personal relationship with Mr. Steiner and asked him to stop texting her on multiple occasions.

15. When Ms. Rogers would try to deflect Mr. Steiner's advances, he texted her such responses as "this isn't helping your schedule at all! LOL [laugh out loud]," "you better not tell on me," and "Nope to[o] late ur [you're] Fucked!"

16. Between June 2012 and December 2012, Ms. Rogers reported Mr. Steiner's inappropriate behavior to two BWW managers—Jordan Schlender and Ryan Wiechmann.

17. In spite of Ms. Rogers' reports, neither manager took action to investigate or stop Mr. Steiner's behavior. As a result, Mr. Steiner continued inappropriately texting Ms. Rogers at all times throughout the day and night.

18. On November 15, 2013, in a text message, Ms. Rogers again made it clear to Mr. Steiner that she had no interest in a personal relationship.

19. Between January and April 2013, Mr. Steiner escalated his campaign of harassment against Ms. Rogers. Mr. Steiner began to inappropriately touch her in various ways—grabbing her buttocks, pulling her hair, and slapping her buttocks with a towel. Ms. Rogers neither consented to nor encouraged Mr. Steiner's harassing behavior and, in fact, asked him to stop multiple times.

20. By March 2013, Ms. Rogers had made the decision to once again complain to BWW management about Mr. Steiner's illegal and intentional discriminatory behavior. Therefore, Ms. Rogers, along with another female BWW employee who was being harassed by Mr. Steiner, Tara Slover, spoke to Mr. Wiechmann.

21. While Mr. Wiechmann agreed that Mr. Steiner's behavior was inappropriate and that Mr. Steiner treated his female employees differently from the male employees, Mr. Wiechmann refused to provide any help. Mr. Wiechmann stated that he did not want to get involved because he did not want to jeopardize his chances at a likely promotion and pay raise.

22. Because Ms. Rogers was unable to get any help from BWW management, she decided that her only recourse was to contact the EEOC.

23. Almost immediately after Ms. Rogers (and other female employees) filed formal complaints with the EEOC, BWW initiated an internal investigation and posted a human resources hotline number to report inappropriate behavior.

24. Despite the fact that Ms. Rogers and others presented BWW management with significant evidence of Mr. Steiner's inappropriate and harassing behavior, Steiner was not fired as a result of BWW's internal investigation.

FIRST CAUSE OF ACTION
Intentional Discrimination
42 U.S.C. 2000e, et seq.

25. Ms. Rogers incorporates by reference the allegations in the foregoing paragraphs.

26. Mr. Steiner, as a manager and agent of BWW, carried out a campaign of illegal and intentional discrimination against Ms. Rogers including touching her inappropriately and without her consent, sending her numerous text messages seeking a personal relationship even after Ms. Rogers told him that she had no interest,

and threatening to retaliate when Ms. Rogers expressed her disinterest.

27. Mr. Steiner's illegal, intentional, and disparate treatment of Ms. Rogers, based on her gender, continued unabated even after she reported the behavior to BWW management.

28. BWW management ignored, minimized, and refused to act on Ms. Rogers' complaints that Mr. Steiner had engaged in illegal, intentional, and disparate discriminatory behavior.

29. Mr. Steiner's behavior, and that of BWW management, constitutes illegal, intentional discrimination and unjustified disparate treatment prohibited by 42 U.S.C. 2000e, *et seq.*

SECOND CAUSE OF ACTION
Intentional Discrimination
M.C.A. § 49-2-303

30. Ms. Rogers incorporates by reference the allegations in the foregoing paragraphs.

31. Mr. Steiner, as a manager and agent of BWW, carried out a campaign of discriminatory treatment against Ms. Rogers including touching her inappropriately and without her consent, sending her numerous text messages seeking a personal relationship even after

Ms. Rogers told him that she had no interest, and threatening to retaliate when Ms. Rogers expressed her disinterest.

32. Mr. Steiner's illegal, intentional, and disparate treatment of Ms. Rogers, based on her gender, continued unabated even after she reported the behavior to BWW management.

33. BWW management ignored, minimized, and refused to act on Ms. Rogers' complaints that Mr. Steiner had engaged in illegal, intentional, and disparate discriminatory behavior.

34. Mr. Steiner's behavior, and that of BWW management, constitutes illegal, intentional discrimination and unjustified disparate treatment prohibited by M.C.A. § 49-2-303.

THIRD CAUSE OF ACTION
Negligent Hiring and Retention

35. Ms. Rogers incorporates by reference the allegations in the foregoing paragraphs.

36. Mr. Yates, as an agent of BWW, negligently hired Mr. Steiner without properly investigating his employment background and history and without properly informing BWW of his work background and history.

37. After Mr. Steiner did, in fact, illegally and intentionally harass female employees, BWW management failed to take appropriate action and negligently retained Mr. Steiner.

38. Even though Ms. Rogers made multiple, separate complaints about Mr. Steiner's illegal and intentional harassment, BWW ignored, minimized, and refused to act to protect Ms. Rogers and other female employees. As a result, Mr. Steiner's illegal and intentional discrimination was allowed to continue.

39. Despite Mr. Steiner's continued illegal and intentional discrimination, BWW management inappropriately retained Mr. Steiner in a managerial role above his victims.

40. BWW management's willingness to hire Mr. Steiner despite their knowledge of Mr. Steiner's previous inappropriate harassment and its unwillingness to discipline Mr. Steiner after being made aware of his illegal and intentional discrimination against BWW's female employees constitutes negligent hiring and retention under the common law tort principals of Montana.

PRAYER FOR RELIEF

41. WHEREFORE, Ms. Rogers respectfully requests the following relief:

a. Trial by jury;

b. For general, compensatory, and consequential damages to be proven at trial in an amount to be determined by the enlightened conscious of the jury;

c. Exemplary and punitive damages sufficient to deter future discriminatory conduct in an amount to be determined by the enlightened conscious of the jury;

d. Cost incurred herein, including reasonable attorney fees;

e. Pre- and post-judgment interest; and

f. Such other and further legal and equitable relief as the Court deems necessary, just, and proper.

Respectfully submitted this 3rd day of March, 2014.

OVERBY LAW OFFICE, P.C.

By:____/s/ C. Frederick Overby____
C. Frederick Overby
Attorney for Plaintiff

DODD LAW FIRM, P.C.

By:____/s/ Matthew A. Dodd______
Matthew A. Dodd
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March 2014, a copy of the foregoing document was served on the following persons by the following means:

_1___ CM/ECF
_____ U.S. First Class Mail
_____ Facsimile
_____ E-mail
_2___ Personal Service

1. Clerk, U.S. District Court

2. Brad Anderson
Registered Agent for Wings of Bozeman, LLC
2923 Montana Avenue
Billings, MT 59101

_____/s/ C. Frederick Overby_________
C. Frederick Overby
Attorney for the Plaintiff